(3)

No. 04-409

Supreme Court, U.S.
FILED
OCT 13 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

TRICITY BEHAVIORAL HEALTH SERVICES, INC.,

Petitioner,

v.

ARIZONA DEPARTMENT OF HEALTH SERVICES; ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION; AND ANTHONY D. RODGERS IN HIS OFFICIAL CAPACITY AS THE DIRECTOR OF THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of Arizona, Division One

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

LOGAN T. JOHNSTON, III
JOHNSTON LAW OFFICES, P.L.C.
One North First Street, Suite 250
Phoenix, Arizona 85004
(602) 452-0615

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
STATEMENT OF THE CASE 1
ARGUMENT 1
CONCLUSION 4

TABLE OF AUTHORITIES

Page

CASES

Valencia Energy Co. v. Arizona Dept. of Revenue, 191 Ariz. 565, 959 P. 2d 1256 (1998) 3

RULES

United States Supreme Court Rule 10 2

United States Supreme Court Rule 13 1

United States Supreme Court Rule 14 1

Arizona Administrative Code of Regulations 9-22-804 3

Arizona Rules of Civil Appellate Procedure, Rule 23 1

COURT ORDERS AND CORRESPONDENCE

December 30, 2003 Mandate of the Arizona Court of Appeals ..... App. 1

December 31, 2003 Transmission of Record from Court of Appeals to The Arizona Supreme Court ..... App. 3

STATEMENT OF THE CASE

The TriCity Behavioral Health Services, Inc. (hereinafter "TriCity") Petition for *Certiorari* contains a number of inaccuracies. First, and most importantly, it fails to state that both its petition for review to the Arizona Supreme Court and its Petition for *Certiorari* were untimely. As Appendix 1 hereto demonstrates, the Arizona Court of Appeals had already issued its mandate back to the superior court on December 30, 2003, when later that day TriCity attempted to file what the Court of Appeals in Appendix 2 hereto notified the Supreme Court was an untimely petition for review.[1] The Supreme Court did in fact deny the petition for review on April 20, 2004, pursuant to the order attached as Item VII to TriCity's Appendix but never suggested why and never disturbed the mandate the Court of Appeals had issued the prior December. Even if TriCity believes the Supreme Court reviewed its untimely petition on its merits, that court denied the petition for review well over 90 days before the Petition herein was filed, in violation of this Court's Rule 13(a).

ARGUMENT

TriCity's actions continue the same pattern of untimeliness that undermined its grievance against the Respondents. In addition, TriCity violates this Court's Rule 14(h)(4) in that it fails to provide with any clarity the identity, roles, and relationships of the parties or what the dispute

[1] Under Rule 23 of the Arizona Rules of Civil Appellate Procedure, a petition for review must be filed within 30 days of the filing of the Court of Appeals decision. TriCity was therefore 5 days late.

was about, so that the Court may readily and adequately understand the points requiring consideration. The Petition may be denied on that ground alone.

Nor does TriCity explain why this Court should grant the Petition when it meets none of the traditional criteria for granting a petition for *certiorari*, or how it justifies its failure to timely file this Petition. No federal question is presented in the state court judgment or the Petition. Though the Court has discretion under its Rule 10 to grant the Petition, even though it does not fall within any of the standard criteria of Rule 10(a)-(c), we respectfully submit this is a case in which, as TriCity's Appendix demonstrates, the Petitioner's arguments have been roundly and thoroughly rejected by the administrative law judge, the Director of AHCCCS, the superior court that heard TriCity's judicial review action, and by the Arizona Court of Appeals. The Arizona Supreme Court also denied TriCity's petition for review.

No important question, let alone one with any reasonable prospect of being successful has been raised. TriCity simply chose the wrong party to pursue and then attempted a wholly meritless and untimely challenge to the Respondents on the theory that, dissatisfied with losing its action against a third-party (ComCare), it could suddenly switch gears and accuse the Respondents of estoppel. Not only was the 2000 grievance against the Respondents untimely, since it should have been filed within 60 days of the December 30, 1998 letter which it alleged was the misconduct by the Respondents that gave rise to this

theory,[2] but this letter upon which TriCity bases its argument gave it the *correct* information in Answer No. 1 of that letter to the relevant question as to who was liable for reimbursement of TriCity's claims (as opposed to the part of the letter upon which TriCity depends, Answer No. 4, which has to do with claims processing and any initial grievance over processing). *See*, Petitioner's Appendix, Item VIII. That TriCity did not justifiably rely on that letter to its detriment so as to establish estoppel is clear from the fact that, as TriCity admits, it had during the previous *August* (of 1998) already chosen the strategy it blames the December 1998 letter for causing, i.e., pursuing only ComCare rather than the Respondents for failure to pay its claims. Without justifiable reliance, there can be no estoppel against the Respondents. *See*, *Valencia Energy Co. v. Arizona Dept. of Revenue*, 191 Ariz. 565, 576, 959 P. 2d 1256, 1267 (1998).

Furthermore, not only had AHCCCS told TriCity that the Arizona Department of Health Services or its subcontractors were responsible for the claims at issue, Judge Bolton had also determined that AHCCCS was not liable for these claims even before TriCity filed its grievance against the Respondents. Petitioner's Appendix, Item II. TriCity could have appealed Judge Bolton's decision but did not. Its collateral attack on her judgment has no merit procedurally or substantively.

---

[2] *See* Petition, pp. 9-12. Pursuant to Arizona Administrative Code of Regulations 9-22-804 (1999), since renumbered as 9-22-802.B, TriCity had 60 days from the adverse action to grieve against the Respondents.

CONCLUSION

The Petition for Review raises no federal question, is untimely, and – as every forum that has reviewed the merits of TriCity's claims has decided – completely without merit. The Petition should be denied.

RESPECTFULLY SUBMITTED this 13th day of October, 2004.

JOHNSTON LAW OFFICES, P.L.C.

LOGAN T. JOHNSTON,
AZ Bar #009484
One N. 1st Street, Suite 250
Phoenix, AZ 85004
(602) 452-0615
Attorney for Respondents
AHCCCS and Rodgers

APPENDIX 1

IN THE
Court of Appeals
STATE OF ARIZONA
DIVISION ONE

TRICITY BEHAVIORAL HEALTH SERVICES, INC., an Arizona nonprofit corporation, Plaintiff-Appellant, v. ARIZONA DEPARTMENT OF HEALTH SERVICES ARIZONA; ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION; and ANTHONY D. RODGERS in his official capacity as the Director of the Arizona health Care Cost Containment System, Defendants-Appellees.	1 CA-CV 02-0742 DEPARTMENT E

MANDATE

(Filed Dec. 30, 2003)

TO: The Honorable Superior Court for MARICOPA County, Arizona in relation to Cause No. CV01-013304.

GREETING: The above cause was presented in your Court and was brought before Division One of the court of Appeals of the State of Arizona in the manner prescribed by law. This Court rendered its memorandum decision and caused the same to be filed on November 25, 2003.

The time for the filing of a motion for reconsideration or petition for review has expired and no motion or petition was filed.

NOW, THEREFORE, YOU ARE COMMANDED that such proceedings be had in said cause as shall be required to comply with the decision of this Court, a copy of the memorandum decision being attached hereto.

IT IS ORDERED that the original of the foregoing MANDATE and a copy of the memorandum decision of the Court were mailed to the Clerk of the Superior Court for MARICOPA County, Arizona on December 30, 2003. A copy of MANDATE and memorandum decision was mailed to the Honorable Robert D. Myers, Judge, and a copy of the MANDATE was mailed on said day to each party appearing or the attorneys of record.

(SEAL)

PHILIP G. URRY, CLERK
By

/s/ [Illegible]
Deputy Clerk

APPENDIX 2

Court of Appeals

STATE OF ARIZONA
DIVISION ONE
STATE COURTS BUILDING
1501 WEST WASHINGTON STREET
PHOENIX, ARIZONA 85007

[Names Omitted In Printing]

December 31, 2003

Mr. Noel K. Dessaint, Clerk
Arizona Supreme Court
402 Arizona State Courts Building
1501 West Washington
Phoenix, Arizona 85007

Dear Sir:

RE: 1 CA-CV 02-0742

TRICITY V. ADHC

MARICOPA CV01-013304

The Court's Memorandum Decision was filed on November 25, 2003. A copy is enclosed herewith.

A untimely petition for review was filed December 30, 2003. The record is transmitted to your Court as follows:

- X Petition for Review (7) (Fee Paid)
- X Appendix to Petition for Review (3)
- X Briefs (Opening, Answering (AHCCCS), Answering (Health Services), Reply Brief to AHCCCS, Reply Brief Health Services) (2 each)
- X Copy of Decision (2 with diskette)
- X Copy of Docket Sheet (2)

PHILIP G. URRY, CLERK
By

/s/ [Illegible]
Deputy Clerk

Enclosures (as noted)
c: Mr. Frank L. Murray
Mr. Robert J. Sorce
Mr. Logan T. Johnston, III
Hon. Robert D. Myers Judge